

Paul S. Grewal  
United States Magistrate Judge

Portnov Abraham,  
Plaintiff  
Case C-14-02887PSG

**FILED**

DEC 04 2014

A/NC

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Your Honor,

For the hearing Motion to Dismiss on December 2, 2014, I prepared a lot of material about U.S. Code especially Maritime (Admiralty) law, Basic Rules of Contracts, and other cases, related to this law and (possibly) to Contracts. I had hoped to use more time in the hearing to prove that my case does not relate to this law and to Carnival Contract. My case (Carnival did not allow me to board the vessel with Israeli Passport) this is not related to the Admiralty law and to Carnival's ticket contract.

The Maritime (Admiralty) Law "applies only to seagoing vessels", that "operated on water subject to the jurisdiction of the U.S. and for vessels owned in the U.S. on the high sea". 46 U.S.C. 30508 applies only to seagoing vessels (to a guest on board a vessel). Admiralty law: "it deals with...and the transportation of passengers and goods by sea"; and dealing with navigational right. In 46 U.S. Code 2101 (A) "Passenger" - means an individual carried on the vessel ("carry - to transfer from one place to another) "aboard" - on, in, onto, into (a ship, train...). "Personal injuries to passengers" - for "passenger who are injured aboard ships..."

United States. Jurisdiction.

"Article III, section 2 of the United States Constitution grants original jurisdiction to U.S. Federal courts over admiralty and maritime matters". Maritime law governed by a uniform three-year statute of limitation.

About Contract:

Contract describes each party's promises to the other. All of the terms in the contract must be lawful (in Carnival Contract - one year, Defendant mentioned six months and one year statute of limitation).

Attached by Carnival (exch. D) Ticket Contract does not correspond to Contract Law. Why is a contract needed if there is law?

As I may assume, Carnival lawyers came up with the contract to circumvent the law. In any case, since the Carnival Ticket Contract is governed by Admiralty law, it relates to admitted guest (on board), which was not the case with me.

In Carnival General Information and Tips...Card is given to admitted guests: " you will receive, when you first check-in at port". Card "is also your cabin key and boarding card. This Card identifies you as a Guest". When I was discriminated against, Carnival had not allowed me to go on the vessel with Israeli passport. I had not been on board, had not received a guest Card, and was not a passenger when the incident took place.

In Reply, p. 4 (28) Carnival's Defendant mentioned that "Plaintiff became a 'guest' when he booked his cruise"(?! And thus by defendants opinion the terms and conditions on Ticket Contract should relate to my case, but it does not.) Why should I look on the internet for Carnival's Ticket Contract (I booked my cruise on vacationstogo.com website)? The Cruise Confirmation and identification document should be sufficient to get admitted on the cruise ship. However, during the preparation for the hearing I found FAQ (Frequently Asked Questions) on vacationstogo website: "Q: Will I print the entire document? A: No, at a minimum you will need to print the page with the... And Guest Cruise Ticket Contract information, read, complete, sign to present at embarkation". What should I complete, shown in the contract (exch. D) in memorandum?

It was also mentioned that the Contract was received at the pier, which was not the case in Buenos Aires.

Even if I saw and signed the Contract and all its terms and conditions (arbitration, venue, limitation, jurisdiction, etc.), it would still not relate to my case.

There are articles about arbitration, for example "Carnival Cruise cases Not Necessarily Headed to Arbitration".

It is easier for me to explain myself in writing, then in person, with emotions, as was on December 2nd, 2014.

I would like to believe that this letter will add some information to your decision.

I sincerely appreciate all of your attention to my case.

With gratitude,

A handwritten signature in black ink, appearing to read "A. Portnov". The signature is written in a cursive, flowing style.

Abraham Portnov

12/4/2014

42 U.S.C. § 1983 acts under "color of law"  
(to sue a government officials in court).

In place of § 1983 should be 42 U.S.C. 2000.

In § 1981 - Equal rights under law

(a) All person within the jurisdiction of the U.S. shall have the same right...

Act of 1964 (42 U.S.C. 2000)

"Any Discrimination, based on: race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights."

Civil Rights Act of 1991, Title 1 - Federal Civil Rights, Remedies.

Damages in Cases of Intentional Discrimination.

Sec. 102. (a) Right of Recovery -

(1) Civil Rights - In an action brought by a complain party under section 706 or 717... against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section..., the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief of the Civil Rights Act of 1964 (42 U.S.C. 2000)

Section 2000a of Title 42, chapter 21 (42 U.S.C. 21) prohibits discrimination or segregation in places of public accommodation. Under this provision, all persons are entitled to full and equal enjoyment of the good, services... of any place of public accommodation without any discrimination or segregation based on race, color, religion, or national origin.

Places: ... , or other organisation, that provide accommodation to temporary visitors...

## Legal-dictionary.

A plaintiff can recover all reasonable and necessary expenses brought about by an injury causes by the wrongful acts of a defendant.

## Law.com. Legal terms and Definitions.

### INJURY.

n. any harm done to a person by the acts or omissions of another.

Injury may include physical hurt as well as damage to reputation or dignity, loss of legal right or breach of contract.

INJURY willful (intentionally) or negligent.

28 U.S.C. A § 1343 (3) " To redress the deprivation...  
providing for equal rights of citizens or  
of all person within the jurisdiction of the U.S.

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Admiralty jurisdiction generally refers to the authority of a nation to hear certain types of cases arising from actions that occur on the high seas or other navigable waters. Some examples are cases such as torts or criminal offenses. The jurisdiction might also extend to contract disputes that relate to maritime law, such as contracts concerning payment of wages to seamen, transportation of persons or cargo, maritime liens or maritime insurance policies.

In order to exercise jurisdiction, a nation typically must have the ability to assert control of the persons or property and the subject matter of the controversy. If a court lacks specific jurisdiction over a person or the property, then the court will not be able to adjudicate the claims. These same general principals are true for nations exercising admiralty jurisdiction.

The exercise of admiralty jurisdiction establishes admiralty law, which should not be confused with the Law of the Sea. International law establishes the Law of the Sea, and it governs the relationships between nations with regard to the sea. The Law of the Sea might include navigational rights, exploiting resources of the sea, mineral rights and jurisdiction over coastal waters.

Nations that assert admiralty jurisdiction usually derive such authority from their constitutions or statutes. Australia, for example, has its source of admiralty jurisdiction from the Colonial Courts of Admiralty Act, which was passed in 1890. This act defines the scope Australia's jurisdiction. It also establishes which courts shall exercise such jurisdiction.

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The United States established its admiralty jurisdiction under its Constitution. It empowers its federal courts to exercise such jurisdiction. The U.S. decision to confer such jurisdiction with its federal courts ensures a uniform body of admiralty law to promote commerce. It also avoids the problem of each of its states developing distinct bodies of admiralty law.

Admiralty law develops from nations exercising admiralty jurisdiction. This type of law regulates the relationships of persons or entities operating vessels on the oceans or other navigable waters. The character of admiralty law is domestic for each country because each nation applies its own laws to resolve maritime disputes.

Courts exercising admiralty jurisdiction will refine the scope of such authority in its decisions. For example, U.S. courts have determined that a party invoking federal admiralty jurisdiction over a tort claim must satisfy two separate conditions concerning location and maritime. The establishment of this two-part test limits the scope of the court's jurisdiction. Prior to this decision, U.S. courts had to determine only that the tort took place on navigable water in order to assert its jurisdiction.

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*Cruise Disclaimer.*  
*"Cruise" means the VOYAGE from the port of embarkation to the port of disembarkation, and....*

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*(W.W.W. emeraude - cruises.)*  
*"Passage Ticket" means the ticket issued in the name of the Passenger(s).*

## Definition

An agreement creating obligations enforceable by law. The basic elements of a contract are mutual assent ([http://topics.law.cornell.edu/wex/mutual\\_assent](http://topics.law.cornell.edu/wex/mutual_assent)), consideration (<http://topics.law.cornell.edu/wex/consideration>), capacity (<http://topics.law.cornell.edu/wex/capacity>), and legality (<http://topics.law.cornell.edu/wex/legality>). In some states, the element of consideration can be satisfied by a valid substitute. Possible remedies for breach of contract ([http://topics.law.cornell.edu/wex/breach\\_of\\_contract](http://topics.law.cornell.edu/wex/breach_of_contract)) include general damages ([http://topics.law.cornell.edu/wex/general\\_damages](http://topics.law.cornell.edu/wex/general_damages)), consequential damages ([http://topics.law.cornell.edu/wex/consequential\\_damages](http://topics.law.cornell.edu/wex/consequential_damages)), reliance damages ([http://topics.law.cornell.edu/wex/reliance\\_damages](http://topics.law.cornell.edu/wex/reliance_damages)), and specific performance ([http://topics.law.cornell.edu/wex/specific\\_performance](http://topics.law.cornell.edu/wex/specific_performance)).

## Overview

Contracts are promises that the law will enforce. The law provides remedies if a promise is breached or recognizes the performance of a promise as a duty. Contracts arise when a duty does or may come into existence, because of a promise made by one of the parties. To be legally binding as a contract, a promise must be exchanged for adequate consideration. Adequate consideration is a benefit or detriment which a party receives which reasonably and fairly induces them to make the promise/contract. For example, promises that are purely gifts are not considered enforceable because the personal satisfaction the grantor of the promise may receive from the act of giving is normally not considered adequate consideration. Certain promises that are not considered contracts may, in limited circumstances, be enforced if one party has relied to his detriment on the assurances of the other party.

Contracts are mainly governed by state statutory and common (judge-made) law and private law. Private law principally includes the terms of the agreement between the parties who are exchanging promises. This private law may override many of the rules otherwise established by state law. Statutory law may require some contracts be put in writing and executed with particular formalities. Otherwise, the parties may enter into a binding agreement without signing a formal written document. Most of the principles of the common law of contracts are outlined in the Restatement of the Law Second, Contracts (<http://www.ali.org/ali/contract.htm>), published by the American Law Institute. The Uniform Commercial Code, whose original articles have been adopted in nearly every state, represents a body of statutory law that governs important categories of contracts. The main articles that deal with the law of contracts are Article 1 (General Provisions) (<http://www.law.cornell.edu/ucc/1/overview.html>) and Article 2 (Sales) (<http://www.law.cornell.edu/ucc/2/overview.html>). Sections of Article 9 (Secured Transactions) (<http://www.law.cornell.edu/ucc/9/overview.html>) govern contracts assigning the rights to payment in security interest agreements. Contracts related to particular activities or business sectors may be highly regulated by state and/or federal law. See Law Relating To Other Topics Dealing with Particular Activities or Business Sectors. (<http://www.law.cornell.edu/topics/topic2.html#particular%20activities>)

In 1988, the United States joined the United Nations Convention on Contracts for the International Sale of Goods (<http://www.jus.uio.no/im/un.contracts.international.sale.of.goods.convention.1980/>) which now governs contracts within its scope.

## menu of sources

### Federal Material

#### U.S. Constitution and Federal Statutes

- 41 U.S.C. (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=41>) (Public Contracts)



# Contract

From Wikipedia, the free encyclopedia

In common law legal systems, a **contract** (or informally known as an **agreement** in some jurisdictions) is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The elements of a contract are "offer" and "acceptance" by "competent persons" having legal capacity who exchange "consideration" to create "mutuality of obligation."<sup>[1]</sup>

Proof of some or all of these elements may be done in writing, though contracts may be made entirely orally or by conduct. The remedy for breach of contract can be "damages" in the form of compensation of money or specific performance enforced through an injunction. Both of these remedies award the party at loss the "benefit of the bargain" or expectation damages, which are greater than mere reliance damages, as in promissory estoppel. The parties may be natural persons or juristic persons. A contract is a legally enforceable promise or undertaking that something will or will not occur. The word promise can be used as a legal synonym for contract,<sup>[2]</sup> although care is required as a promise may not have the full standing of a contract, as when it is an agreement without consideration.

Contract law varies greatly from one jurisdiction to another, including differences in common law compared to civil law, the impact of received law, particularly from England in common law countries, and of law codified in regional legislation. Regarding Australian Contract Law for example, there are 40 relevant acts which impact on the interpretation of contract at the Commonwealth (Federal / national) level, and an additional 26 acts at the level of the state of NSW. In addition there are 6 international instruments or conventions which are applicable for international dealings, such as the United Nations Convention on Contracts for the International Sale of Goods.<sup>[3]</sup>

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## Formation

In addition to the elements of a contract:

- A party must have capacity to contract. That means parties in a contract must justify their majority in age to understand terms of the contract and be mentally able.
- The purpose of the contract must be lawful.
- The form of the contract must be legal.
- The parties must intend to create a legal relationship.
- The parties must consent.

As a result, there are a variety of affirmative defenses that a party may assert to avoid their obligation.

### Affirmative defenses

Vitiating factors constituting defences to purported contract formation include:

- Mistake (such as *non est factum*)
- Incapacity, including mental incompetence and infancy/minority
- Duress
- Undue influence
- Unconscionability
- Misrepresentation or fraud
- Frustration of purpose

Such defenses operate to determine whether a purported contract is either (1) void or (2) voidable. Void contracts cannot be ratified by either party. Voidable contracts *can* be ratified.

In the United States, persons under 18 are typically minor and their contracts are considered voidable; however, if the minor voids the contract, benefits received by the minor must be returned. The minor can enforce breaches of contract by an adult while the adult's enforcement may be more limited under the bargain principle. Promissory estoppel or unjust enrichment may be available, but generally are not.

### Formalities and writing

Typically, contracts are oral or written, but written contracts have typically been preferred in common law legal systems;<sup>[20]</sup> in 1677 England passed the Statute of Frauds which influenced similar statute of frauds laws in the United States and other countries such as Australia.<sup>[21]</sup> In general, the Uniform Commercial Code as adopted in the United States requires a written contract for tangible product sales in excess of \$500, and real estate contracts are required to be written. If the contract is not required by law to be written, an oral contract is valid and therefore legally binding.<sup>[22]</sup> The United Kingdom has since replaced the original Statute of Frauds, but written contracts are still required for various circumstances such as land (through the Law of Property Act 1925).

An oral contract may also be called a parol contract or a verbal contract, with "verbal" meaning "spoken" rather than "in words", an established usage in British English with regards to contracts and agreements,<sup>[23]</sup> and common although somewhat deprecated as "loose" in American English.<sup>[24]</sup>

If a contract is in a written form, and somebody signs it, then the signer is typically bound by its terms regardless of whether they have actually read it<sup>[25]</sup> provided the document is contractual in nature.<sup>[26]</sup> However, affirmative defenses such as duress or unconscionability may enable the signer to avoid the obligation. Further, reasonable notice of a contract's terms must be given to the other party prior to their entry into the contract.<sup>[27]</sup>

An unwritten, unspoken contract, also known as "a contract implied by the acts of the parties", which can be either an implied-in-fact contract or implied-in-law contract, may also be legally binding. Implied-in-fact contracts are real contracts under which the parties receive the "benefit of the bargain". However, contracts implied in law are also known as quasi-contracts, and the remedy is quantum meruit, the fair market value of goods or services rendered.

### Invitation to treat

Where a product in large quantities is advertised in a newspaper or on a poster, it generally is not considered an offer but instead will be regarded as an invitation to treat, since there is no guarantee that the store can provide the item for everyone who might want one. However, an exception to this rule may be made if an advertisement includes a reward, which is what happened in the famous case of *Carlill v. Carbolic Smoke Ball Company*,<sup>[28]</sup> decided in nineteenth-century England.



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### Adhesion Contract (Contract Of Adhesion)

A contract that so strongly favors one party or so unfairly restricts another, that it creates a presumption that one party had no choice when entering into it. If a court determines that the contract is overly unfair, it may refuse to enforce the agreement against the disadvantaged party. An example of a contract of adhesion might be a form contract provided by an unethical leasing company. Adhesion contracts are often evidenced by the comparative strength of the parties-- for example, a giant corporation as compared to an average citizen.

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the front of a queue (for example at an airport car rental desk) there is additional pressure to sign quickly. Finally, if there has been negotiation over price or particular details, then concessions given by the salesperson may be seen as a gift which socially obliges the purchaser to respond by being co-operative and concluding the transaction.

### **Standard form contracts may exploit unequal power relations**

If the good which is being sold using a contract of adhesion is one which is essential or very important for the purchaser to buy (such as a rental property or a needed medical item) then the purchaser might feel they have no choice but to accept the terms. This problem may be mitigated if there are many suppliers of the good who can potentially offer different terms (see below), although even this is not always possible (for instance, a college freshman may be required to sign a standard-form dormitory rental agreement and accept its terms, because the college will not allow a freshman to live off-campus).

Some contend that in a competitive market, consumers have the ability to shop around for the supplier who offers them the most favorable terms and are consequently able to avoid injustice. However, in the case of credit cards (and other oligopolies), for example, the consumer while having the ability to shop around may still have access to only form contracts with like terms and no opportunity for negotiation. Also, as noted, many people do not read or understand the terms so there might be very little incentive for a firm to offer favorable conditions as they would gain only a small amount of business from doing so. Even if this is the case, it is argued by some that only a small percentage of buyers need to actively read standard form contracts for it to be worthwhile for firms to offer better terms if that group is able to influence a larger number of people by affecting the firm's reputation.

Another factor which might mitigate the effects of competition on the content of contracts of adhesion is that, in practice, standard form contracts are usually drafted by lawyers instructed to construct them so as to minimize the firm's liability, not necessarily to implement managers' competitive decisions. Sometimes the contracts are written by an industry body and distributed to firms in that industry, increasing homogeneity of the contracts and reducing consumer's ability to shop around.

## **Common law status**

As a general rule, the common law treats standard form contracts like any other contract. Signature or some other objective manifestation of intent to be legally bound will bind the signor to the contract whether or not they read or understood the terms. The reality of standard form contracting, however, means that many common law jurisdictions have developed special rules with respect to them. In general, in the event of an ambiguity, the courts will interpret standard form contracts *contra proferentem* against the party that drafted the contract, as that party (and only that party) had the ability to draft the contract to remove ambiguity.

### **United States**

#### **Generally**





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Royal Caribbean announced its earnings results on Thursday. The cruise line reported revenue of \$1.98 billion for the quarter. The company's quarterly revenue was up 5.2%.

We last reported on Mr. Goldstein in February when he sold 44,256 shares of Royal Caribbean stock at an average price of \$52.96, for a total transaction of \$2,343,797.76.

What do the hard working crew members and the loyal shore-side cruise employees think of all of the money Mr. Goldstein is raking in?

The cruise line pays a minimal salary to Royal Caribbean waiters and cabin attendants of only \$50 a month; the cruise passengers pay tips to the waiters and stewards but the cruise line is scooping up much of the tips to pay other crew member's salaries. Employees like utility cleaners earn a pittance of around \$550 a month (with no tips) working around 11-12 hours a day, every day of the month during contracts that are 6-8 months long.

In September of last year, Royal Caribbean fired over one-hundred employees in its corporate offices in order to increase profits. You can read about that here: [Loyal to Royal? Royal Caribbean Axes 100 Jobs in Corporate Headquarters.](#)

What's the saying? The rich get richer, the poor get poorer.

Tags: [Taxes](#), [adam goldstein](#), [goldstein](#), [royal caribbean](#), [stock](#)

## **Shocking News: Carnival Incorporates in the U.S. & Subjects Itself to U.S. Tax, Labor, Wage, Safety & Environmental Regulations**

Posted on April 1, 2014 by [Jim Walker](#)

In an exclusive story, Cruise Line News has learned that cruise industry giant Carnival Corporation recently incorporated its business in the United States (in the state of Delaware). Carnival intends to announce this historic development tomorrow, April 2nd, at Carnival's headquarters in Miami.

Since 1972, Carnival has incorporated its business and registered its cruise ships in the country of Panama. For over 40 years, Carnival cruise ships have flown the flag of Panama in order to avoid the onerous safety regulations, excessive labor laws, unreasonable environmental laws, and high taxes of the United States of America.

Cruise Law News' discovery of this historic event came about when prominent maritime lawyer Jim Walker bumped into Carnival's Chairman Micky Arison at court side when Arison's championship basketball team, the Miami Heat, won another game. Maritime ace lawyer Walker asked Arison: "Micky, if Dwayne Wade and LeBron James earn several hundred million dollars from Carnival and pay tens of millions of dollars in U.S. taxes, don't you think it is fair that Carnival - which earns over 15 billion dollars a year in cruise ticket sales - pays its fair share of U.S. taxes?"

